

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CHRISTOPHER WAINWRIGHT,)	CASE NO. 1:07 CV 894
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
)	
v.)	MAGISTRATE JUDGE
)	WILLIAM H. BAUGHMAN, JR.
FEDEX GROUND PACKAGE SYSTEM, INC.,)	
)	
Defendant.)	<u>REPORT & RECOMMENDATION</u>

This matter has been referred to me for general pretrial supervision, including report and recommendation on dispositive motions.¹ The defendant, FedEx Ground Package Systems, Inc., has moved for dismissal with prejudice for want of prosecution.² For the reasons stated below, I recommend the granting of this motion.

The plaintiff, Christopher Wainwright, filed a three count complaint alleging employment discrimination.³ At the time, Wainwright had counsel.⁴ Thereafter, Wainwright's counsel withdrew from the case with leave of this Court.⁵ After referral, I

¹ ECF # 8.

² ECF # 16.

³ ECF # 1, Exhibit 1. The complaint was originally filed in Cuyahoga Court of Common Pleas, and FedEx removed it to this Court.

⁴ *Id.*

⁵ ECF #s 7 and 8.

issued an order giving Wainwright an opportunity to have substitute counsel enter an appearance.⁶ No substitute counsel has so appeared.

The Court received information that Wainwright's address had changed to 1008 East Main Street, Geneva, Ohio 44041, after mail to the address listed in the complaint came back undelivered and directed that all notices and service be sent to that address.⁷ Wainwright failed to oppose FedEx's motion to dismiss Counts I and II of the complaint, I recommended the granting of the motion,⁸ and Judge Nugent adopted that recommendation without objection from Wainwright.⁹

Counsel for FedEx has attempted to complete discovery on the remaining count of the complaint, but Wainwright has not responded.¹⁰ Based on this lack of response, and a phone mail message from Wainwright indicating his intention to abandon his remaining claim,¹¹ FedEx moves to dismiss the case for want of prosecution.

The Court has taken multiple steps to encourage Wainwright to participate in the prosecution of this case, either through counsel or *pro se*, as detailed above. He has refused to do so, particularly by way of imposing no opposition to FedEx's two motions to dismiss and by failing to respond to discovery. Enough resources of the Court and of the defendant

⁶ ECF # 9.

⁷ ECF # 13 and non-document order of 11/26/07.

⁸ ECF # 10.

⁹ ECF # 14.

¹⁰ ECF #s 16 and 17.

¹¹ ECF # 16 at 2-3 (Brief in Support of Motion to Dismiss).

have been expended in trying to resolve this case on the merits. FedEx's motion to dismiss is well taken and should be granted.

Dated: January 31, 2008

s/ William H. Baughman, Jr.

United States Magistrate Judge

Objections

Any objections to this Report and Recommendation must be filed with the Clerk of Courts within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order.¹²

¹² See, *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). See also, *Thomas v. Arn*, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986).